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Population Assistance and Family Planning Programs: Issues for Congress

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LEGISLATION

Population Assistance and Family Planning Programs: Issues for Congress

SUMMARY

Since 1965, United States policy has supported international population planning based on principles of voluntarism and informed choice that gives participants access to information on all methods of birth control. This policy, however, has generated contentious debate for over two decades, resulting in frequent clarification and modification of U.S. international family planning programs.

In the mid-1980s, U.S. population aid policy became especially controversial when the Reagan Administration introduced restrictions. At the Second U.N. International Conference on Population, U.S. officials announced a revised U.S. policy rejecting the existence of a global population "crisis," characterizing population growth as a "neutral phenomenon," and advocating sound policies and the development of free-market economies as "the natural mechanism" for slowing population growth. Critics viewed this policy as a major and unwise departure from U.S. population efforts of the previous 20 years.

The "Mexico City policy" further denied U.S. funds to foreign non-governmental organizations (NGOs) that perform or promote abortion as a method of family planning, regardless of whether the source of money was the U.S. Presidents Reagan and Bush also banned grants to the U.N. Population Fund (UNFPA) because of its program in China, where coercion has been used. During the Bush Administration, a slight majority in Congress favored funding UNFPA and overturning the Mexico City policy but failed to alter policy because of presidential vetoes or the threat of a veto.

President Clinton repealed Mexico City

policy restrictions and resumed UNFPA funding. Since 1995, debates have been contentious regarding efforts to cut funding, codify the Mexico City policy, and block UNFPA funds if it continued work in China.

For FY2001, Congress increased population aid to \$425 million, a level however, well below the President's \$542 million request. Congress further (P.L. 106-428) denied the obligation of any family planning funds until February 15, 2001, giving the new incoming President the opportunity to decide whether to apply restrictions.

On Jan. 22, 2001, President Bush issued a memorandum revoking the Clinton Administration population aid policy position and restoring in full the terms of the Mexico City restrictions that were in effect on Jan. 19, 1993. In the future, foreign NGOs and international organizations, as a condition for receipt of U.S. funds, will need to agree not to perform or actively promote abortions as a method of family planning in other countries.

For FY2002, President Bush seeks \$425 million for population assistance and a \$25 million contribution to the U.N. Population Fund. These are the same amount enacted for FY2001.

In the first legislative action in the 107th Congress, the House International Relations Committee on May 2 approved an amendment to H.R. 1646 that would overturn President Bush's order to reimpose the Mexico City policy. The full House, however, voted (218-210) to remove the Committee-provision from H.R. 1646 on May 16.

MOST RECENT DEVELOPMENTS

On May 16, 2001, the House voted (218-210) to delete a provision in the Foreign Relations Authorization Act (H.R. 1646) that would have overturned the President's abortion restrictions attached to international family planning programs. The House International Relations Committee had adopted (26-22) the amendment on May 2 during markup of H.R. 1646. The restrictions, which were first applied in 1984, lifted in 1993 by President Clinton, and reimposed on January 22, 2001, by President Bush, prohibit U.S. population aid grants to foreign non-governmental and international organizations unless such groups certify that they will not perform or promote abortions as a method of family planning, regardless of whether such activities were funded from U.S. Government money or from private sources. On February 15, USAID released specific policy and contract guidelines to implement the President's directive. The Administration had said the President would veto H.R. 1646 if the Committee language on Mexico City policy remained in the bill.

On April 9, 2001, President Bush sent Congress his FY2002 budget request, including \$425 million for population assistance and \$25 million for the U.N. Population Fund. These are the same amounts as enacted for FY2001.

BACKGROUND AND ANALYSIS

Introduction to U.S. Population Assistance Issues: Setting the Context

Population assistance became a global issue in the late 1950s and early 1960s after several private foundations, among them the International Planned Parenthood Federation, began providing money to developing countries to control high population growth rates. In 1966, when global population growth rates were reaching an historic annual high of 2.1%, the United Nations began to include population technical assistance in its international development aid programs. Population assistance grew rapidly over the next half-dozen years, with the United States, other developed countries, and international organizations such as the World Bank, all beginning to contribute funds.

The first International Population Conference was held in 1974, followed by the second in Mexico City in 1984, and the third in Cairo in 1994. The attention and funding given to international family planning programs are credited with helping to bring a decrease in population growth in developing countries from about 2.4% per year in the 1960s to about 1.8% in the 1990s. Fertility rates have fallen in the developing world from 6.2 children per woman in 1950 to just below 3 in 1998. Nevertheless, while global population growth has slowed, it reached 6 billion in 1999 and is expected to rise to 8.9 billion by 2050, with most all of the growth occurring in developing nations. In 1960, 70% of the world's population lived in developing countries; today the level is 80%, and these countries now account for 95% of world-wide population growth.

But population statistics alone are only part of a larger story. For the past thirty years and more, countries have heatedly debated what the statistics mean. Proponents of aggressive population planning programs have held that high fertility rates and rapid population growth are serious impediments to a country's development. According to this school of thought, people are consumers: no poor country can increase its standard of living and raise its per capita income while wrestling with the problems of trying to feed and care for a rapidly expanding population. Thus, poor and developing countries should invest in family planning programs as part of their economic development process.

On the opposing side, opponents of aggressive population planning programs hold that there is little or no correlation between rapid population growth and a country's economic development. Some argue that increased numbers of people provide increased productive capacity; therefore, they say, high population growth rates actually can contribute to a country's ability to increase its standard of living. At the very least, proponents of this view say, current economies of scale and global trading patterns have too many empirical variables and uncertainties to establish a direct correlation between population growth and economic development.

As this population debate evolved, many countries, including the United States, have changed their views. In the 1974 international population conference, the United States and other donor countries asserted that high fertility rates were an impediment to economic development — an assertion that was then rejected by developing countries. In keeping with this view, the Carter Administration in 1977 proposed language in domestic legislation, later enacted in Section 104(d) of the Foreign Assistance Act (FAA) of 1961, which sought to link population growth and traditional development assistance programs on the grounds that a high population growth rate could have a serious negative effect on other development objectives.

A decade later, at the second conference in Mexico City in 1984, a reversal of positions occurred. Developing countries had become convinced of the urgent need to control population growth, while U.S. officials asserted that population growth was not necessarily a negative force in economic development, but was instead a "neutral phenomenon." At Mexico City, Reagan Administration officials emphasized the need for developing countries to adopt sound economic policies that stressed open markets and an active private sector.

Again nearly a decade later, the Clinton Administration changed the U.S. position on population planning programs by lifting restrictive provisions adopted at the Mexico City Conference. At the 1994 Cairo Conference, Clinton Administration emphasized U.S. support for assuring family planning and reproductive health services, improving the status of women, and providing access to safe abortion. Eight years later, nearly to the day, President Bush revoked the Clinton Administration position on family planning issues and abortion, reimposing in full the Mexico City restrictions in force during the 1980s and early 1990s.

Throughout this debate, which at times has been the most contentious foreign aid policy issue considered by Congress, the cornerstone of U.S. policy has remained to be a commitment to international family planning programs based on principles of voluntarism and informed choice that give participants access to information on all major methods of birth control.

More recently, groups supporting strategies to limit rapid population growth are supporting a broader agenda of initiatives that include the promotion of gender equality, increasing adolescent education on sexuality and reproductive health, and ensuring the universal right of health care, including reproductive health. Although endorsed at the July 1999 U.N. meeting of 179 nations to assess progress of the Cairo population conference recommendations, the issues of child education and government responsibilities for ensuring access to safe abortions in countries where the practice is legal were particularly controversial. Some governments opposed the broadening of the Cairo mandate and some, including Argentina, Nicaragua, and the Vatican, filed reservations to the recommendations reached by consensus.

In addition to differences of opinion over how population growth affects economic development in developing countries, population planning assistance has become an issue of substantial controversy among U.S. policymakers for two other reasons: the use of federal funds to perform or promote abortions abroad and how to deal with evidence of coercion in some foreign national family planning programs, especially in China; and setting the appropriate, effective, and affordable funding levels for family planning assistance.

Abortion and Coercion

The bitterest controversies in U.S. population planning assistance have erupted over abortion — in particular, the degree to which abortions and coercive population programs occur in other countries' family planning programs, the extent to which U.S. funds should be granted to or withheld from such countries and organizations that administer these programs, and the effect that withholding U.S. funds will have on global population growth and family planning services in developing nations. These issues essentially stem from the contentious domestic debate over U.S. abortion policy that has continued since the Supreme Court's 1973 *Roe v. Wade* decision holding that the Constitution protects a woman's decision whether to terminate her pregnancy. Abortion opponents have introduced in every Congress since 1973 constitutional amendments or legislation that would prohibit abortions, but none have been enacted. As an alternative, abortion critics have successfully persuaded Congress to attach numerous provisions to annual appropriation measures banning the use of federal funds for performing abortions.

Most of this debate has focused on domestic spending bills, especially restrictions on abortions under the Medicaid program in the Labor/Health and Human Services appropriation legislation. Nevertheless, the controversy spilled over into U.S. foreign aid policy almost immediately when Congress approved in late 1973 an amendment to the Foreign Assistance Act of 1961 (Section 104(f)) prohibiting the use of foreign development assistance to pay for the performance of abortions or involuntary sterilizations, to motivate or coerce any person to practice abortions, or to coerce or provide persons with any financial incentive to undergo sterilizations. Since 1981, Congress has enacted nearly identical restrictions in annual Foreign Operations appropriation bills.

For the past 25 years, both congressional actions and administrative directives have restricted U.S. population assistance in various ways, including those set out in the Foreign Assistance Act of 1961, and more recent executive regulations and appropriation riders prohibiting **indirect** support for coercive family planning (specifically in China) and abortion activities related to the work of international and foreign nongovernmental organizations.

Two issues in particular which were initiated in 1984 — the “Mexico City” policy involving funding for non-governmental-organizations (NGOs), and restrictions on funding for the U.N. Population Fund (UNFPA) because of its activities in China — have remained controversial and continue as prominent features in the population assistance debate.

The “Mexico City” Policy. (For more detailed discussion of the original “Mexico City” policy, its implementation, and impact, see CRS Report RL30830, *International Family Planning: The “Mexico City” Policy*.) With direct funding of abortions and involuntary sterilizations banned by Congress since the 1970s, the Reagan Administration in 1984 announced that it would further restrict U.S. population aid by terminating USAID support for any organizations (but not governments) that were involved in voluntary abortion activities, even if such activities were undertaken with non-U.S. funds. U.S. officials presented the revised policy at the 2nd U.N. International Conference on Population in Mexico City in 1984. Thereafter, it became known as the “Mexico City” policy. USAID announced in late 1984 that it would not provide funds for the International Planned Parenthood Federation/London (IPPF) in FY1985 because the IPPF/London, which had operations in 132 countries, refused to renounce abortion-related activities it carried out with non-U.S. funds. On January 13, 1987, Planned Parenthood Federation of America (PPFA) filed a lawsuit against USAID challenging the “Mexico City” policy. In 1990, the U.S. District Court and Court of Appeals ruled against PPFA, and in 1991, the Supreme Court refused to review the lower court’s decision. The President’s discretionary foreign policy powers to establish different standards for NGOs and foreign governments were thereby upheld.

During the Bush Administration, efforts were made in Congress to overturn the Mexico City policy and rely on existing congressional restrictions in the Foreign Assistance Act of 1961 banning direct U.S. funding of abortions and coerced sterilizations. Provisions adopted by the House and/or Senate that would have reversed the policy, however, were removed from legislation under threat of a presidential veto.

In its first days in office, the Clinton Administration changed U.S. family planning assistance policies, covering not only the Mexico City restrictions but also funding for UNFPA population assistance in general. In a January 22, 1993 memo to USAID, President Clinton lifted restrictions imposed by the Reagan and Bush Administrations on USAID grants to family planning NGOs — in effect repealing the Mexico City policy. The memo noted that the policy had extended beyond restrictions in the FAA and was not mandated by law. In his remarks, President Clinton explained that this step “will reverse a policy that has seriously undermined much needed efforts to promote safe and effective family planning programs abroad, and will allow us to once again provide leadership in helping to stabilize world population.” President Clinton characterized this action as one of the most significant “environmental” steps the United States could take. On August 26 and 30, 1993, respectively, USAID provided \$2.5 million to the World Health Organization’s Human Reproduction Program (HRP) and \$13.2 million to the IPPF.

Beginning in 1993, abortion opponents in Congress attempted to legislate modified terms of the Mexico City policy. Under the threat of a Presidential veto and resistance from the Senate, Mexico City restrictions had not been enacted into law until passage in November 1999 of the Consolidated Appropriations Act for FY2000 (P.L. 106-113). As discussed in more detail below under the section, *Congressional Debate in the 106th Congress*, the White

House accepted the family planning conditions in exchange for congressional support of the payment of nearly \$1 billion owed by the United States to the United Nations. The restrictions expired at the end of FY2000, although they will apply to all FY2000 appropriated funds which can be obligated through September 30, 2001.

Like his predecessor, President George W. Bush, as one of his first official actions in office, issued a memorandum revoking the Clinton Administration memorandum restoring in full the terms of the Mexico City restrictions that were in effect on Jan. 19, 1993. As was the case during the 1980s and early 1990s, in the future foreign NGOs and international organizations, as a condition for receipt of U.S. federal funds, must agree not to perform or actively promote abortions as a method of family planning in other countries. As President Bush stated in his order, American taxpayer funds should be not used to pay for abortions or advocate or actively promote abortion. Critics charge, however, that the policy is a violation of free speech and the rights of women to choose; and that the policy will undermine maternal health care services offered in developing nations and may actually contribute to the rise in the number of abortions performed, some that are unsafe and illegal. (See *Congressional Debate in the 107th Congress*, below, for congressional consideration of amendments supporting and opposing the Mexico City policy this year.)

New Mexico City Policy Guidelines. Following several weeks of inter-agency consultations, USAID released on February 15, 2001, specific contract clauses necessary to implement the President's directive. (President Bush re-issued on March 28 his Memorandum to USAID, including contract guidelines identical to those in the agency's February 15 notice. He did so in an effort to avoid a vote in Congress to overturn his policy under provisions of the Congressional Review Act (CRA) (P.L. 104-121). The CRA, enacted in 1996, established a mechanism by which Congress can review and disapprove, using expedited procedures, federal agency rules. S.J.Res. 9, introduced by Senator Boxer and others on March 20, states congressional disapproval of the February 15 USAID rule regarding the Mexico City Policy. By re-issuing the Memorandum to USAID, complete with policy guidelines, the White House hopes that the Mexico City Policy will not fall within the parameters of the CRA.)

The new guidelines state that U.S. NGOs receiving USAID grants cannot furnish assistance to foreign NGOs which perform or actively promote abortion as a method of family planning in USAID-recipient countries, or that furnish assistance to other foreign NGOs that conduct such activities. When USAID provides assistance directly to a foreign NGO, the organization must certify that it does not now or will not during the term of the grant perform or actively promote abortion as a method of family planning in USAID-recipient countries or provide financial support to other foreign NGOs that carry out such activities. Abortion is defined as a "method of family planning when it is for the purpose of spacing births," including (but not limited to) abortions performed for the physical or mental health of the mother. To perform abortions is defined as the operation of a "facility where abortions are performed as a method of family planning." (USAID memorandum to all contracting officers and negotiators, titled *Voluntary Population Activities – Restoration of the Mexico City Policy*, dated February 15, 2001.)

Promoting abortion is defined as an organization committing resources "in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning." Examples of what constitutes the promotion of abortion include: operating a

family planning counseling service that includes information regarding the benefits and availability of abortion; providing advice that abortion is an available option or encouraging women to consider abortion; lobbying a foreign government to legalize or to continue the legality of abortion as a method of family planning; and conducting a public information campaign in a USAID-recipient country regarding the benefits and/or availability of abortion as a method of family planning.

The regulations also contain exceptions to these policies:

- ! abortions may be performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest.
- ! health care facilities may treat injuries or illnesses caused by legal or illegal abortions (post-abortion care).
- ! “passive” responses by family planning counselors to questions about abortion from pregnant women who have already decided to have a legal abortion is not considered an act of promoting abortion.
- ! referrals for abortion as a result of rape, incest, or where the mother’s life would be endangered, or for post-abortion care are permitted.

USAID will further be able to continue support, either directly or through a grantee, to foreign governments, even in cases where the government includes abortion in its family planning program. Money provided to such governments, however, must be placed in a segregated account and none of the funds may be drawn to finance abortion activities.

Funding for UNFPA. Also at the 1984 Mexico City Conference, the Reagan Administration established the requirement that the United Nations Population Fund (UNFPA) provide “concrete assurances that [it] is not engaged in, or does not provide funding for, abortion or coercive family planning programs.” Concern was highest over UNFPA’s activities in China’s coercive family planning practices. At the time, the Administration reportedly held up \$19 million (of \$38 million allocated for UNFPA for FY1984) until the organization could provide the necessary assurances.

Subsequently, Congress legislated a more restrictive UNFPA policy — aimed at coercive Chinese family planning programs and UNFPA’s continuing operations in the country — by enacting the “Kemp-Kasten amendment” in the FY1985 Supplemental Appropriations Act (P.L. 99-88). This language prohibited the use of appropriated funds for any organization or program, determined by the President, to be supporting or participating “in the management” of a program of coercive abortion or involuntary sterilization. Following enactment of P.L. 99-88, USAID announced that \$10 million of \$46 million that had been earmarked for UNFPA during FY1985 would be redirected to other programs, and later said that the United States would not contribute to UNFPA at all in 1986. Most of the \$25 million that was originally allocated for UNFPA was spent for other international family planning activities. Even though this pattern to redirect UNFPA transfers to other population assistance programs continued, critics of the Kemp-Kasten amendment and the President’s determination to suspend contributions asserted that UNFPA was the world’s most effective family planning organization and that the quality of services provided in developing nations outside of China suffered due to the unwillingness of U.S. support. At the time of suspension,

U.S. payments represented nearly one-third of UNFPA's annual budget. From 1986 through 1993, no U.S. contributions went to UNFPA.

Like the Mexico City policy, the Clinton Administration moved quickly to lift the ban of UNFPA contributions, making available \$14.5 million in FY1993 but stipulating that none of the funds could be used in China. Again, congressional critics of Chinese family planning practices attempted unsuccessfully to attach riders to various foreign aid bills banning U.S. contributions unless UNFPA withdrew from China or the President could certify that China no longer maintained a coercive family planning program. Nevertheless, while the United States continued to support UNFPA during the next five years, Congress attached restrictions in appropriation measures that in most cases reduced the U.S. contribution by the amount UNFPA spent in China. UNFPA ended a 5-year program in China in 1997. But when the organization negotiated in early 1998 a new multi-year Chinese program, Congress, over the Administration's objections, prohibited American support for FY1999. Congress resumed UNFPA funding in FY2000 and 2001 but under the condition that the \$25 million earmark would be reduced by whatever amount UNFPA's program cost for China. On February 24, 2000, the State Department announced that it would deduct \$3.5 million – an amount equivalent to UNFPA's planned program in China – from the U.S. contribution to the international family planning organization. President Bush has not announced any changes regarding UNFPA funding. The FY2002 budget proposes a \$25 million contribution.

Family Planning Conditions in China. As noted, much of the UNFPA debate has focused on that organization's programs in China, both because of China's well-known population growth problem and because of widespread publicity given to reports of coercion in its family planning programs. China's population increased from 500 million in 1950 to 1.008 billion according to the 1982 census — an average annual growth rate of 2%, or a doubling of the population every 36 years. (Although the 2% rate is not particularly large by developing country standards, many consider a lower rate crucial to China's economic development prospects given the country's already huge population size.)

Given population growth rates, Beijing authorities came to view control of population growth not simply as an important priority, but as a necessity for the nation's survival. In an attempt to reach a 1% annual population growth rate, Chinese authorities in 1979 instituted a policy of allowing only one child per couple, providing monetary bonuses and other benefits as incentives. Women with one living child who become pregnant a second time were said to be subjected to rigorous pressure to end the pregnancy and undergo sterilization; couples who actually had a second child faced heavy fines, employment demotions, and other penalties. PRC leaders have admitted that coerced abortions and involuntary sterilizations occur, but insist that those involved are acting outside the law and are punished, particularly through the Administrative Procedure Law enacted in October 1990. Chinese authorities have termed female infanticide an "intolerable crime" that must be punished by law.

After 1983 — thought to be the peak year of coercion in Chinese family planning in the 1980s — the PRC in 1984 relaxed its "one-child" policy in rural areas. The original target for the PRC's population in the year 2000 had been 1.2 billion, but that goal was relaxed in 1984 to 1.25 billion, and the Chinese minister of family planning indicated in 1991 that the target population size for 2000 was now 1.294 billion. (UNFPA reports that China's population in 1999 was 1.267 billion, with an annual growth rate of 0.9%.) In addition, the policy has been loosely applied for Tibetan, Muslim, and other ethnic minorities. China has

also reported regional differences in the so-called “one-child” policy. Economic reforms helped weaken policy enforcement in more prosperous areas, with rising incomes absorbing fines.

More recent press reports suggest that the Chinese State Family Planning Commission (SFPC) has softened some of its previous harsh tactics to limit population growth. A number of counties have ended the system of permits for pregnancy and quotas for the number of children that can be born annually. When it launched in January 1998 its latest \$20 million, five-year program in China, UNFPA announced that SFPC officials had agreed to drop birth targets in the 32 counties where U.N. activities would be focused. And in May 1999, the city of Beijing ended an eight-year policy that women had to be at least 24 years old to bear a child and lifted the requirement for couples to obtain a certificate before having their child.

Nevertheless, the degree of coercive family planning practices in China remains a cloudy and controversial matter. The State Department, in its 2000 report on human rights conditions (released February 2001), states that the Chinese government “prohibits the use of force to compel persons to submit to abortion or sterilization; however, intense pressure to meet family planning targets set by the Government has resulted in documented instances in which family planning officials have used coercion, including forced abortion and sterilization, to meet government goals.” The State Department further cautions that, although it is too early for a complete assessment, it is clear from visits to selected counties where UNFPA/SFPC family planning and reproductive health activities based solely on voluntary measures are underway, the record is mixed. Some counties, for example, have not yet eliminated, or have only begun to eliminate, the birth quota system.

Funding Levels

Since 1965, USAID has obligated over \$6.6 billion in assistance for international population planning. In many years, and especially over the past decade, the appropriate level of funding for population assistance has been controversial, and at times linked directly with differences concerning Mexico City restrictions and abortion. During the 1980s and 1990s, Congress and the executive branch frequently clashed over the amount of foreign aid that should be allocated to family planning programs. Until FY1996, Congress generally supported higher funding levels for population aid than proposed by the President, especially during the Reagan and Bush Administrations. Family planning appropriations – including bilateral population aid and UNFPA contributions – averaged about \$280 million annually during the late 1980s, but grew rapidly in the 1990s, peaking in FY1995 at \$577 million.

With the change in party control of Congress during the FY1996 budget cycle, family planning policy and budget issues became, and have continued to be, the most contentious foreign aid matter considered by Congress. Population appropriation levels fell abruptly to \$356 million in FY1996. But because of the four-month delay in enacting the Foreign Operations spending measure (largely because of the family planning dispute), coupled with a new requirement to “meter” population funds – that is, making them available on a monthly schedule in increments of \$23 million over a 15-month period – USAID had only \$151.5 million available for supporting bilateral family planning programs in FY1996. Most of the FY1996 population aid appropriation was “pushed” into the next year because of the metering mechanism. Population aid appropriations grew slightly to \$385 million during each of the next four years, but fell far short of the President’s request. Due to restrictions enacted for

FY2000 noted above, \$12.5 million of those appropriations were transferred from population assistance to child health programs. President Clinton proposed a \$541.6 million budget for bilateral population aid in FY2001, a level that would have returned to the amount provided in FY1995. Congress approved \$425 million. President Bush proposes the same level for FY2002.

Financing family planning and basic reproductive health care programs in developing countries became a major issue at the 1994 Cairo population conference. Participating nations agreed that foreign aid donors would provide one-third, or \$5.7 billion, of the annual costs of such services that were estimated to grow to about \$17 billion in 2000. A July 1999 conference assessing implementation of the 1994 Cairo strategy, however, found that industrialized countries had fallen far short of the financing goal, providing only about \$1.9 billion per year.

Table 1. Population Assistance, FY1992-2001
(appropriations of millions of \$s)

	1993	1994	1995	1996	1997	1998	1999	2000 ^a	2001	2002
Population Aid ^b	446.3	485.1	541.6	356.0	385.0	385.0	385.0	362.5	425.0	425.0
UNFPA	14.5	40.0	35.0	22.8	25.0	20.0	0.0	21.5	25.0	25.0
Total	460.8	525.1	576.6	378.8	410.0	405.0	385.0	384.0	450.0	450.0

Source: AID/Office of Population. FY2002 = request.

^a FY2000 levels reflect a transfer of \$12.5 million from population aid and \$3.5 million deduction from UNFPA due to legislative restrictions.

^b Because of the FY1996 “metering” requirement for population aid that delayed the availability of funds, the actual amount available for obligation in that year was \$151.5 million. Since large amounts appropriated in FY1996 and FY1997 were “metered” into the next fiscal year, levels available for obligation in FY1997 and FY1998 were \$495 million and \$554 million, respectively. In years when “metering” was not required – before FY1996 and since FY1998 – amounts available for obligation were nearly the same as or identical to the appropriated level shown in Table 1.

Supporters of increasing population aid, many of whom believe strongly that population growth must be curtailed before meaningful development can occur, contend that family planning should be among the highest priorities of U.S. development strategy. Population growth, they argue, has long-term consequences, affecting diverse U.S. interests in environmental protection, resource conservation, global economic growth, immigration management, and international stability. They maintain that attention to family planning assistance now could obviate future allocations in other development and health-related accounts. Some proponents of population assistance programs see a particular irony, for instance, in limiting funds for population stabilization programs while increasing the budget claims of child survival and infectious disease programs. Population aid proponents also cite recent studies that suggest that the prevalence of abortion declines in countries that have wider availability and use of effective contraceptives. This relationship, they say, further reduces the risk of unsafe abortions that are the leading cause of maternal deaths in developing nations.

Opponents of increasing population aid argue that even without added funding levels, the United States continues to be the largest bilateral donor in population assistance programs. Some also claim that there is little or no correlation between rapid population growth and a country's economic development. At the very least, some opponents say, current economies of scale and global trading patterns have too many empirical variables and uncertainties to establish a direct correlation between population growth and economic development.

International Family Planning Issues and Legislation In the 106th Congress

U.S. population assistance programs and funding levels have been extraordinarily controversial in Congress since 1995. House and Senate differences over abortion restrictions and U.N. population programs have been of such proportion that lawmakers have not been able to agree to a final, long-term resolution on what degree of abortion restrictions should govern U.S. international family planning assistance. Instead, House, Senate, and White House negotiators have eventually reached a series of interim settlements that have represented temporary solutions to the family planning controversy.

Mexico City Restrictions and Certification Requirements for FY2000

House-Senate Debate. The controversy over whether to re-instate revised Mexico City abortion restrictions continued to be a focus of congressional debate on the FY2000 Foreign Operations Appropriations bill (H.R. 2606). As cleared by a House-Senate conference committee, H.R. 2606 continued to apply a \$385 million cap on population aid, metered over a 12-month period but dropped two House amendments (by Smith and Greenwood), one of which would have imposed modified Mexico City restrictions. Nevertheless, keeping an earlier pledge, President Clinton vetoed H.R. 2606 on October 18, 1999, because of reductions to his foreign aid budget request.

As Congress and the White House searched for a final FY2000 budget agreement, international family planning issues were among the most contentious aspects of the negotiations. When congressional leaders refused to include U.N. arrearage payments without revised Mexico City language, the White House reluctantly agreed to abortion restrictions, marking the first time that Mexico City conditions had been included in enacted legislation (Foreign Operations, H.R. 3422, incorporated into H.R. 3194, the Consolidated Appropriations Act for FY2000, P.L. 106-113).

Under the terms of Section 599D of H.R. 3422, private foreign non-governmental and multilateral organizations had to certify that they neither performed abortions nor lobbied to change abortion laws in foreign countries in order to receive USAID population aid grants in FY2000. Section 599D allowed the President to waive the certification requirement for up to \$15 million in grants to groups that would otherwise be ineligible, but with the penalty of a \$12.5 million transfer out of the \$385 million population aid appropriation to child health programs. The restrictions applied only to FY2000 funds, although the money is available for obligation until September 30, 2001.

Implementing the Certification Requirement and Program Impact. One day after signing the legislation, the President exercised his waiver authority (November 30, 1999), thereby reducing FY2000 population aid funds to \$372.5 million. He further instructed USAID to implement Section 599D in a way that would minimize the impact on U.S. funded family planning programs. In January 2000, USAID issued guidance to its overseas missions and cooperating agencies on how it would manage the certification requirement. USAID required all non-U.S. NGOs (whether non-profit or for-profit) and multilateral organizations that are prime contractors, grantees, and cooperative agreement recipients to complete a certification form prior to receiving FY2000 population funds. In addition, all U.S. and non-U.S. prime awardees were directed to collect certification statements from foreign NGOs and multilateral organizations that are sub-contractors or grantees below the prime award level. In the certification form, organizations had to state that they would not engage in three types of activities with either USAID or non-USAID funds from the date they signed an agreement to receive FY2000 USAID population funds through September 30, 2001:

- ! perform abortions in a foreign country, except where the life of the mother would be endangered, or in cases of forcible rape or incest;
- ! violate the laws of a foreign country concerning the circumstances under which abortion is permitted, regulated, or restricted; or
- ! attempt to alter the laws or governmental policies concerning circumstances under which abortion is permitted, regulated, or restricted.

If an organization declined to certify or did not return the certification form, it was ineligible to receive FY2000 USAID population funds unless it was granted a waiver under the \$15 million exemption cap.

In the first external review of USAID's management of the new restrictions, the General Accounting Office released a report on October 5, 2000, finding that USAID had complied with FY2000 legislative family planning conditions regarding abortion activities (GAO Report GAO-01-3, found at [<http://www.gao.gov/>]). The GAO, however, also reported that the International Planned Parenthood Federation (IPPF) had inadvertently transferred \$700,000 in USAID funds to two affiliates the Federation and USAID had earlier agreed would not be supported with U.S. funds because the two organizations engaged in abortion-related activities. Although the error was corrected prior to the GAO audit, Senator Helms, who commissioned the GAO study, raised concerns over IPPF's initial violation of its agreement with USAID.

A key issue regarding an evaluation of the impact of the FY2000 restrictions is whether the \$15 million in total grants allowed under the waiver authority were sufficient to cover all foreign organizations that declined to certify regarding their involvement in abortion-related activities. As of late 2000, 448 groups had signed the certification agreement, and USAID officials expected another 250 groups would certify over the next year. Nine organizations refused to certify, including two of the largest recipients of USAID population aid grants – IPPF and the World Health Organization (WHO). (During the Reagan and Bush Administrations, IPPF was one of the few family planning organizations that declined to sign “Mexico City” policy conditions and received no USAID funding during that period.) It is

estimated that these nine non-certifying organizations will be awarded about \$8.4 million in FY2000 grants, of which IPPF accounts for \$5 million and WHO roughly \$2.5 million. USAID expects that another 10 organizations will refuse to sign the agreement, but that cumulative awards for non-certifying groups will fall within the \$15 million cap.

Critics of the certification requirement opposed it on several grounds. From an administrative standpoint, they say it increases USAID costs to manage family planning programs because of the additional paperwork and delay implementation of projects. (USAID has contracted with John Snow, Inc. to track the certification process.) They further believe that family planning organizations will cut back on services because they are unsure of the full implications of the restrictions and do not want to risk losing eligibility for USAID funding. Opponents also believe the new conditions will undermine relations between the U.S. government and foreign NGOs and multilateral groups, creating a situation in which the United States challenges their sovereignty on how to spend their own money and imposes a so-called “gag” order on their ability to promote changes to abortion laws and regulations in developing nations. The latter, these critics note, would be unconstitutional if applied to American groups working in the United States. Supporters of the certification requirement argue that even though permanent law bans USAID funds from being used to perform or promote abortions, money is fungible; that organizations receiving American-taxpayer funding can simply use USAID resources for legal activities while diverting money raised from other sources to perform abortions or lobby to change abortion laws and regulations. The certification process, they contend, stops the fungibility “loophole.”

FY2001 Legislative Initiatives

Strengthening Existing Restrictions on Use of USAID Funds for Abortion.

Aside from the controversy over whether the United States should regulate how foreign family planning organizations spend their own money, legislation was reported in 2000 that would add penalties for groups found to use USAID funds to perform or promote abortions. Section 205 of S. 2382 would have required the USAID Administrator to certify annually that any organization about to receive U.S. population aid funds had not violated abortion, involuntary sterilization, and biomedical research restrictions under permanent law first enacted in 1973 (Section 104(f) of the Foreign Assistance Act of 1961). If any organization violated these conditions, the group would be barred for ten years from receiving any U.S. foreign aid funds authorized under the Foreign Assistance Act of 1961. Under current policy, USAID, using discretionary authority, would most likely take remedial action or suspend grants to any organization it found to be in violation of the abortion-related restrictions. There is no Agency policy, however, regarding how this might affect an organization's eligibility for other, non-population foreign aid grants, nor is there a specified penalty like that imposed by S. 2382. USAID administrators would make determinations on a case-by-case basis, although it could be expected that the relationship between the Agency and an offending organization concerning future grants would be strained. The Clinton Administration, as well as family planning organizations and pro-choice proponents, opposed these additional restrictions in S. 2382 on the grounds that they undermined USAID discretionary authority, imposed excessive administrative burdens on agency officials, and represented yet another, although perhaps symbolic, attack on international family planning programs. S. 2382 received no further action during the 106th Congress.

Foreign Operations Appropriations, FY2001, and Abortion Restrictions.

S. 2522, the Foreign Operations appropriations approved by the Senate on June 22, effectively reversed the abortion-related restrictions applied to FY2000 population funding. Section 590 of the bill substituted for the FY2000 restrictions language that restored previous Clinton Administration policy on foreign NGOs and multilateral organization eligibility for USAID population aid grants. Specifically, the conditions stipulated that such organizations:

- ! shall not be subject to requirements regarding how they use non-U.S. government funds for advocacy or lobbying activities that are more restrictive than those that apply to U.S. NGOs which receive economic aid grants; and
- ! shall not be ineligible for USAID grants solely on the basis of health or medical services provided with non-U.S. government funds so long as such services do not violate the laws of the country in which they are provided or would not violate U.S. federal law if provided in this country.

It is generally held that under the Constitution, U.S. NGOs cannot be restricted from using their own funds to advocate policy positions they support. The first new condition would essentially extend that protection to foreign NGOs and multilateral organizations. The second condition would not disqualify an organization from receiving USAID grants for performing abortions with its own money if abortion or whatever medical service it provided was legal in the country in which it operated, and that the service would be legal in the United States if performed here.

H.R. 4811, the FY2001 appropriations bill, approved the House on July 13 (239-185), maintained the identical FY2000 enacted abortion-related restrictions: a prohibition on U.S. grants to private foreign non-governmental and multilateral organizations that perform abortions or lobby to change abortion laws in foreign countries, even if they use non-U.S. government resources for these activities. The President could waive (as he did for FY2000) the application of the restrictions for up to \$15 million in grants to organizations that failed to certify their non-involvement in abortion activities, an action however, that would result in the loss of \$12.5 million in population assistance. During subcommittee markup, the Foreign Operations panel rejected (7-8) an amendment by Representative Lowey to remove the abortion restrictions from the bill. A similar amendment during full Committee mark-up also failed 26-34. During House debate on the bill, another amendment was rejected (Greenwood, 206-221) that would have removed the restrictions. The White House has said that the President would veto an appropriation bill that included the House restrictions.

As enacted, the Foreign Operations Appropriations (P.L. 106-429) provided \$425 million for population aid – roughly mid-way between House and Senate-passed amounts – but deferred the question of abortion restrictions until a new President assumed office. None of the \$425 million could be obligated until February 15, 2001.

UNFPA Restrictions and Other Coercive Family Planning Issues

FY2000 conditions and funding. Congress debated UNFPA policy several times in 1999 and re-visited the issue in 2000 as part of the Foreign Operations Appropriations bill. During House debate on H.R. 2415 (the American Embassy Security Act) in mid-July 1999,

the House adopted (221-198) an amendment by Representative Campbell authorizing a \$25 million U.S. contribution to the U.N. Population Fund (UNFPA), but with the condition that the payment would be reduced dollar-for-dollar by the amount UNFPA spends in China, unless the President certified that the UNFPA's China program emphasized improving the delivery of voluntary family planning services, was consistent with human rights principles, operated only in counties where targets and quotas had been terminated, and worked under the oversight of UNFPA's Executive Board. Congress eventually agreed to the House-passed UNFPA conditions and a \$25 million earmark as part of the Consolidated Appropriations Act for FY2000 (P.L. 106-113). The Foreign Operations Appropriations Act for FY2000, legislation also incorporated into P.L. 106-113, nearly identical restrictions and funding level for UNFPA.

Pursuant to these legislative requirements, the State Department notified Congress on February 24, 2000, that UNFPA budgeted \$3.5 million for China in FY2000. As a result, the United States deducted an equivalent amount from its planned \$25 million contribution.

Congress also continued for FY2000 a provision first enacted the previous year in the Foreign Operations appropriations measure strengthening the "voluntary" principal of U.S. family planning programs. Prompted by reports of coercive family planning practices in Peru and other countries, the provision, sponsored by Representative Tiahrt, specifically defines the principal of *voluntarism* in population aid programs and establishes criteria for USAID to apply in managing U.S. family planning projects overseas. The Tiahrt amendment was included in the enacted Foreign Operations bill incorporated into P.L. 106-113.

Legislative action for FY2001. Congressional actions regarding UNFPA funding and restrictions generally followed provisions approved by the House and Senate in 1999. In S. 2522, the Senate earmarked \$25 million for UNFPA, under conditions that none of the funds could be used for programs in China. In H.R. 4811, the House continued current law, permitting \$25 million for UNFPA, an amount that would be reduced dollar-for-dollar by whatever amount UNFPA spends in China. Conferees adopted the House position.

Based on reports of continuing coercive family planning practices in Peru, the House Appropriations Committee proposed a series of new investigations and reports by USAID and its Inspector General in an effort to strengthen application of the Tiahrt amendment, not only in Peru, but in all countries where USAID maintains family planning programs.

Population Aid Funding, FY2000-2001

Similar to recent debates over funding for bilateral population assistance, the Senate proposed to increase the President's \$400 million request for FY2000 while the House recommended a continuation of the \$385 million cap that has been in place since FY1997. S. 1234 (Foreign Operations Appropriations, FY2000) earmarked \$425 million for family planning programs under the development assistance account, an action that would have resulted in about \$470 million for population activities across all appropriation accounts. P.L. 106-113 included the House amount of \$385 million.

Renewing its priority placed on family planning programs within the U.S. foreign aid budget, the Administration asked Congress to approve \$541.6 million for FY2001, an amount equal to appropriations in FY1995. Officials said that such a large increase was necessary to

restore U.S. leadership in international family planning programs. They estimated that the additional \$169 million for FY2001 would prevent about 3.5 million unintended pregnancies. Contending that unintended pregnancies are one of the primary causes of abortions, they further argued that a U.S. funding commitment of this size would translate into 1.4 million fewer abortions.

Congressional Action. S. 2522, the FY2001 Foreign Operations Appropriations bill, earmarked \$425 million for population assistance, an amount that when combined with resources in other foreign aid accounts, would total about \$482 million for FY2001. Although considerably higher than the \$372.5 million FY1999 appropriation, the Senate bill fell well short of Administration efforts to restore family planning resources to the FY1995 level. The House bill, H.R. 4811, capped funding for population programs at \$385 million. House-Senate conferees agreed to provide \$425 million for FY2001.

International Family Planning Issues and Legislation In the 107th Congress

Soon after President Bush ordered the reimposition of the Mexico City Policy, several Members introduced legislation that would have the effect of overturning the President's decision. H.R. 361 would mandate that eligibility requirements for NGOs and multilateral organizations receiving USAID family planning grants could be no more restrictive than those that apply to foreign governments. S. 367 and H.R. 755 would subject foreign groups (concerning the use of non-USAID funding for advocacy and lobbying activities) to the same restrictions imposed on U.S. NGOs and maintaining their eligibility as long as these groups do not engage in health or medical services in violation of the laws of the country in which they operate or that would violate U.S. law if provided here. Moreover, S.J.Res. 9 provides a joint resolution of disapproval of USAID's rule of February 15, 2001, relating to restoring the Mexico City Policy. Under the terms of the Congressional Review Act, a law enacted in 1996 providing Congress a mechanism to review and overturn agency rules, a resolution of disapproval would be considered under expedited procedures by Congress.

In the first legislative vote of the 107th Congress on international family planning issues, the House International Relations Committee on May 2 adopted (26-22) an amendment by Representative Lee that would overturn the Mexico City policy. The Lee amendment was attached to H.R. 1646, an omnibus foreign policy authorization bill. The amendment, which incorporated the text of H.R. 755, would have not subjected foreign groups to different restrictions imposed on U.S. NGOs concerning the use of non-USAID funding for advocacy and lobbying activities. It further directed that foreign NGOs would not be ineligible for U.S. grants solely on the basis of health or medical services provided with non-USAID funding so long as these activities were not in violation of the laws of the country in which the groups operated and would not violate U.S. law if provided here. On May 16, however, the full House voted (218-210) to delete the Lee amendment from H.R. 1646. The Administration had said the President would veto H.R. 1646 if the Committee language on Mexico City policy remained in the bill.

LEGISLATION

H.R. 361 (Maloney)

Saving Women's Lives through International Family Planning Act of 2001. Authorizes \$541.6 million for population assistance in FY2002 and amends the Foreign Assistance Act of 1961 with text aimed at reversing the Mexico City Policy. Introduced on January 31; referred to the House International Relations Committee.

H.R. 755 (Lowey)

Global Democracy Promotion Act of 2001. Prohibits certain restrictive eligibility requirements to foreign nongovernmental organizations with respect to family planning programs. Introduced on February 27, 2001; referred to the House International Relations Committee. See H.R. 1646 below.

H.R. 1117 (Maloney)

United Nations Population Fund (UNFPA) Funding Act of 2001. Authorizes the appropriation of \$35 million and \$50 million in FY2002 and FY2003, respectively, for a U.S. voluntary contribution to the UNFPA, with conditions. Introduced on March 20; referred to the House International Relations Committee.

H.R. 1646 (Hyde)

Foreign Relations Authorization Act, FYs 2002 and 2003. Authorizes appropriations for the Department of State. Introduced on April 27, 2001; during markup on May 2, the House International Relations Committee approved (26-22) an amendment by Representative Lee that would overturn the Mexico City policy. The amendment was a modified version of H.R. 755. The Committee reported H.R. 1646 on May 4 (H.Rept. 107-57). The House voted (218-210) to delete the Lee amendment on May 16, and passed H.R. 1646 (352-73).

S. 367 (Boxer)

Global Democracy Promotion Act of 2001. Prohibits certain restrictive eligibility requirements to foreign nongovernmental organizations with respect to family planning programs. Introduced on Feb. 15, 2001; referred to the Senate Foreign Relations Committee.

S.J. Res. 9 (Boxer)

Providing for Congressional Disapproval of the Rule Submitted by the United States Agency for International Development Relating to the Restoration of the Mexico City Policy. Introduced on March 20; referred to the Senate Foreign Relations Committee.